

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**TONY SKANNELL,**

**Defendant.**

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**CASE NO. 8:02CR353**

**ORDER**

This matter is before the Court on the Defendant's motion to continue the resentencing hearing and for reconsideration of the previous order denying the Defendant's request for subpoenas (Filing No. 584).

On February 13, 2007, this matter was scheduled for resentencing on June 4, 2007. (Filing No. 577.) On May 21, 2007, the Defendant moved for issuance of subpoenas to be served by the U.S. Marshal out of the state for the June 4, 2007, resentencing. The motion and affidavit, untimely submitted pursuant to NECrimR 17.1(a), provided no description of the nature of the testimony of the two proposed witnesses. (Filing No. 580.) On May 23, 2007, the motion for issuance of subpoenas was denied. (Filing No. 581.) On June 1, 2007, the Defendant filed the instant motion. Defense counsel states that the witnesses' testimony is relevant to a prior conviction relating to the Defendant's career offender status. In other words, the defense argues that the Defendant is not a career offender. (Filing No. 584.) This issue has been decided and is not before the Court. The Eighth Circuit, in discussing Skannell's sentencing issues, noted that Skannell did not argue on appeal the validity of his qualifying convictions but rather raised only a *Booker* argument. The circuit court stated that "under the post-*Booker* regime, the district court properly considered

Skannell's prior offenses and found him to be a career offender § 4B1.1." (Filing No. 562, at 35.) The Court specifically remanded Skannell's case for "resentencing under *Booker*, using the career offender 360 to life range as the correctly determined advisory Guidelines range." (*Id.* at 39.) Because the issue that defense counsel seeks to raise is not before the Court, the motion to continue the resentencing hearing and for reconsideration is denied.

IT IS ORDERED that the Defendant's motion to continue the resentencing hearing and for reconsideration of the previous order denying the Defendant's request for subpoenas (Filing No. 584) is denied.

DATED this 4<sup>th</sup> day of June, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge